

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

WALTER BAER,

Appellant,

vs.

ROY J. NORENE, Divisional Director of Immi-  
gration, for the District of Oregon.

Appellee.

Transcript of Record

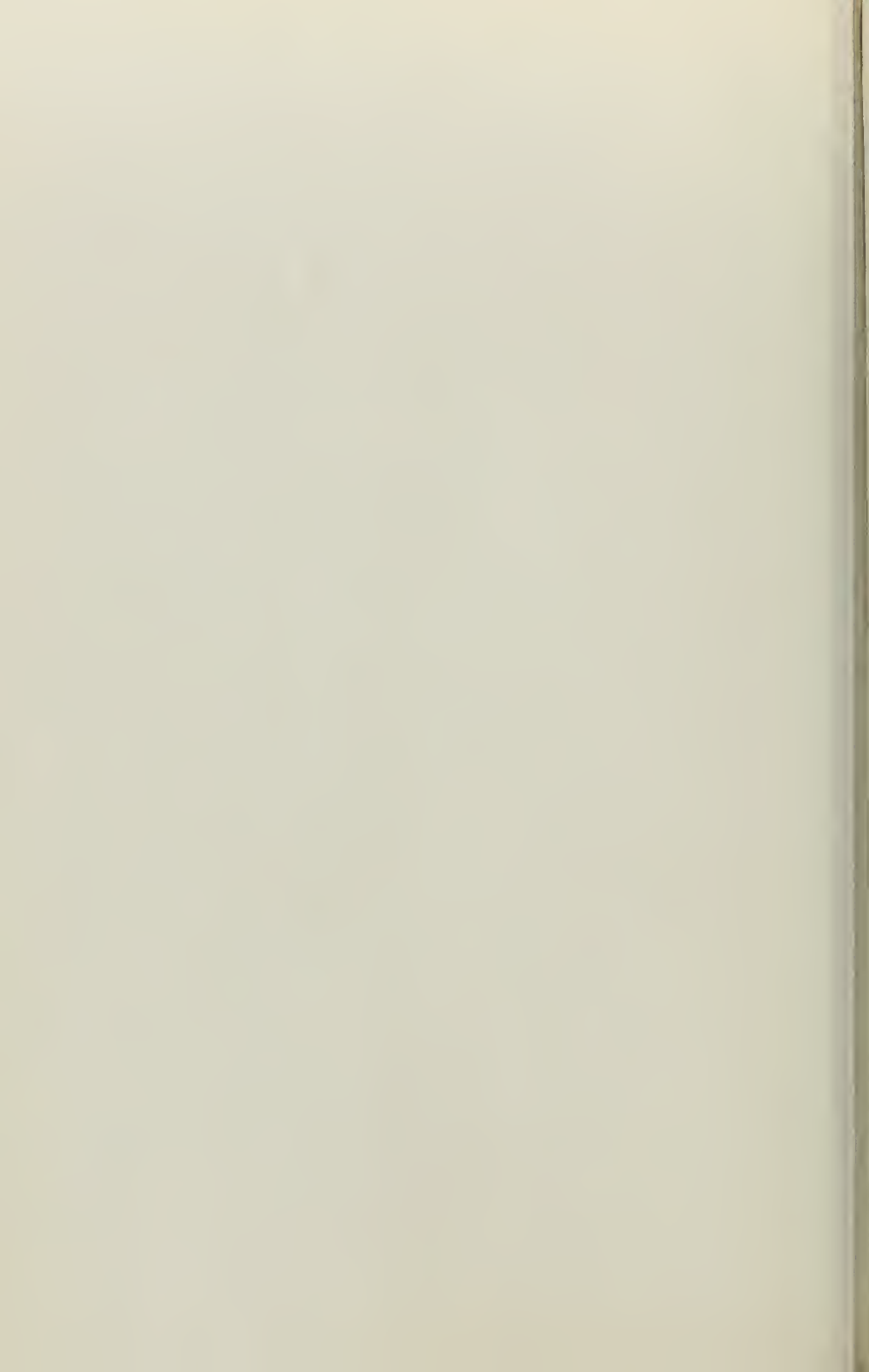
Upon Appeal from the District Court of the United  
States for the District of Oregon.

FILED

JUN 28 1935

PAUL P. O'BRIEN,

CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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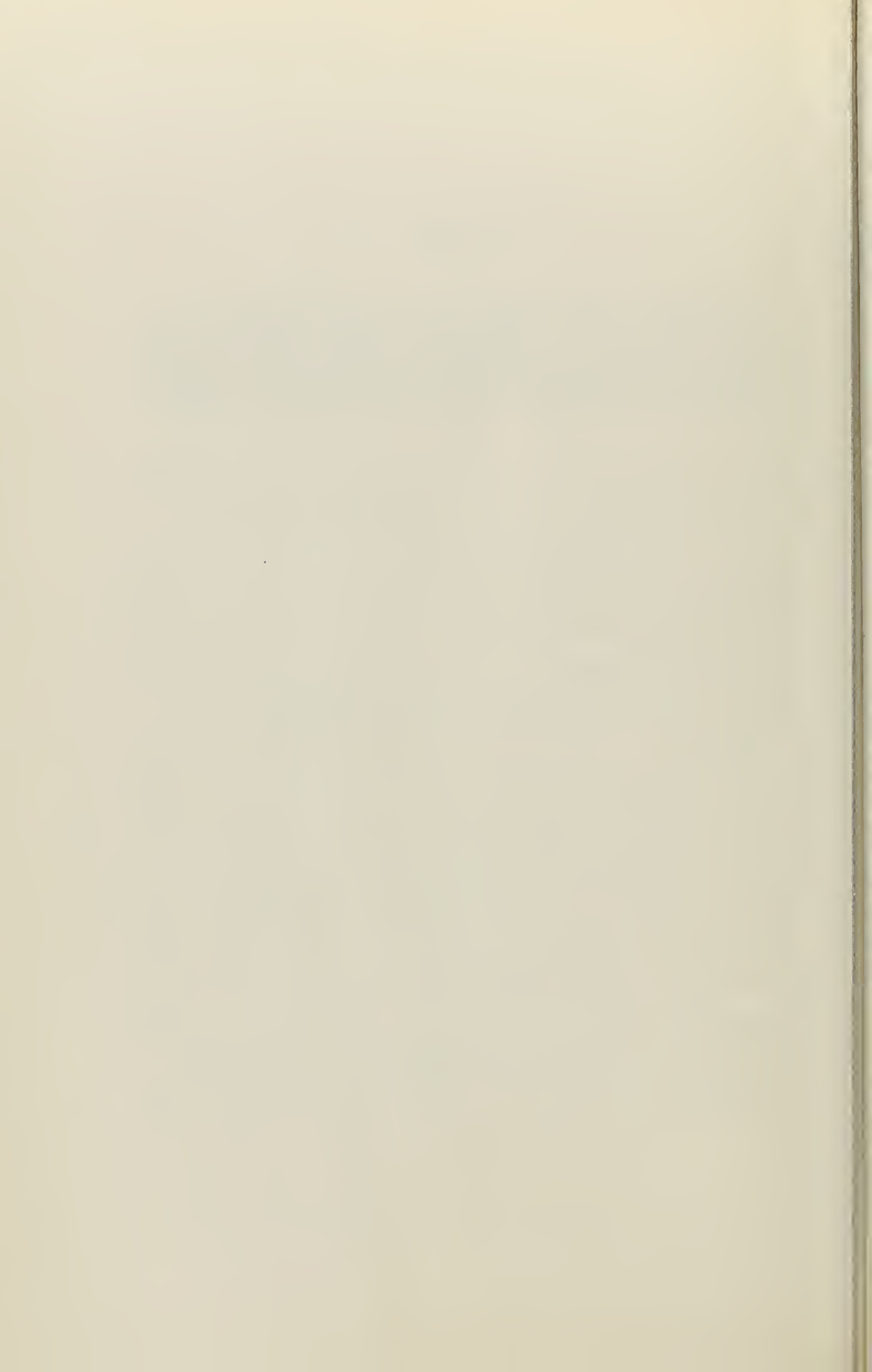


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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF THE  
ATTORNEYS OF RECORD:

IRVIN GOODMAN,

Yeon Building, Portland, Oregon,  
for Appellant.

CARL C. DONAUGH,

United States Attorney for the District of  
Oregon, and

HUGH L. BIGGS,

Assistant United States Attorney for the  
District of Oregon,

506 United States Court House,  
Portland, Oregon,  
for Appellee.

In the District Court of the United States for the  
District of Oregon.

L-12422

In the Matter of the Application of  
WALTER BAER,  
for a Writ of Habeas Corpus.

CITATION ON APPEAL.

United States of America.—ss.

The President of the United States of America,  
to:—

ROY J. NORENE, Divisional Director of Immi-  
gration and to CARL DONAUGH, United  
States Attorney for the District of Oregon, his  
Attorney; or HUGH L. BIGGS, Deputy Unit-  
ed States Attorney herein:

YOU AND EACH OF YOU ARE HEREBY  
CITED AND ADMONISHED to be and appear at  
a United States Circuit Court of Appeals for the  
Ninth Circuit, to be holden at the city of San Fran-  
cisco, in the State of California, or at such other  
city as may be determined by said Court, within  
thirty (30) days from the date hereof, or such  
further time as may be allowed by said Court, pur-  
suant to an order allowing an appeal of record  
in the Clerk's office of the United States District  
Court for the District of Oregon, wherein Walter  
Baer is appelland and you are appellee, to show



cause, if any there be, why the decree rendered against the said appellant as in the said order allowing the said appeal mentioned should not be corrected and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable James Alger Fee, United States District Judge for the District of Oregon, this 5th day of June 1935.

JAMES ALGER FEE,  
United States District Judge.

Service accepted hereon this 5th June, 1935.

HUGH L. BIGGS,  
Asst. U. S. Attorney.

A true copy of the original herein.

.....  
Attorney for Appellant.

[Endorsed]: Filed Jun. 5, 1935. [1]

In the District Court of the United States for the  
District of Oregon.

[Title of Court.]

March Term, 1935.

BE IT REMEMBERED, That on the 28th day  
of March, 1935, there was duly filed in the District  
Court of the United States for the District of  
Oregon, an Amended Petition for Writ of Habeas  
Corpus in words and figures as follows, to-wit: [2]

[Title of Court and Cause.]

AMENDED PETITION FOR WRIT OF  
HABEAS CORPUS.

To the Honorable J. Alger Fee and John McNary,  
Judges of said Court:

Your petitioner, Walter Baer, of the City of  
Portland, Multnomah County, State of Oregon,  
files this, his amended petition for writ of habeas  
corpus, and respectfully shows:

I.

That your petitioner is unlawfully imprisoned,  
detained and restrained of his liberty in said city,  
county and state by Roy J. Norene, Divisional Di-  
rector of Immigration, under and by virtue of a  
warrant of arrest issued by the Department of  
Labor of the United States.

II.

That the cause or pretense for said imprison-  
ment, detention and restraint is that your peti-  
tioner

“Has been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Burglary in the second degree; Knowingly uttering a forged bank check; and Forgery of Endorsement.”

### III.

That your petitioner had a hearing upon said imprisonment, detention and restraint in said city, county and state before Roy J. Norene, Divisional Director of Immigration who, thereafter, recommended that your petitioner be deported from the United States and thereafter, said deportation was ordered by said Department of Labor. [3]

### IV.

That your petitioner is illegally imprisoned, detained and restrained of his liberty in said city, county and state by said Roy J. Norene in violation of the fundamental principles that inhere in due process of law because said imprisonment, detention and restraint is not by virtue of any final order, process, or decree of any court and because said warrant of arrest and said hearing and said order of deportation are all illegal and void and that your petitioner should forthwith be restored to his liberty for the following reasons, to wit:

(a) That at said hearing before Roy J. Norene your petitioner, as the cause or pretense for said

imprisonment, detention and restraint of his liberty, was charged with having committed three crimes involving moral turpitude for which he served prison terms of one or more years each, to-wit: (1) the crime of burglary in the second degree in the State of Idaho nearly eighteen years ago (i. e. sentenced about June 26, 1917); (2) the crime of knowingly uttering a forged bank check in the State of Oregon nearly sixteen years ago (i. e. sentenced about November 17, 1919); (3) the crime of forgery by endorsement in the State of Oregon nearly fourteen years ago (i. e. sentenced about June 8, 1921);

(b) That on April 15, 1919, your petitioner was pardoned by the then Governor of the State of Idaho for commission of the crime of burglary in the second degree in said State in the year 1917;

(c) That, your petitioner verily believes, no substantial evidence was produced at said hearing before Roy J. Norene to sustain the deportation charge filed against your petitioner who said Roy J. Norene alleges entered the United States from Germany nearly twenty-eight years ago landing at New York on July 6, 1907 at the age of nine years;

(d) That, your petitioner verily believes, said alleged crimes of knowingly uttering a forged bank check and forgery by endorsement are not [4] crimes which the law, in such cases made and provided, terms crimes involving moral turpitude and,

pursuant to 8 U. S. C. A., Sec. 155 and the Court's interpretation thereof, your petitioner at no time committed crimes involving moral turpitude.

#### V.

That your petitioner is now thirty-seven (37) years old and has been a bona fide resident and inhabitant of the city of Portland, Multnomah County, State of Oregon, for many years prior to and at all times subsequent to his marriage on November 30, 1925, to Freda Volpp who was born at Willamette, Clackamas County, State of Oregon, and there are as issue of said marriage three little children who were born in said city of Portland and whose names and ages are as follows, to-wit: George, age eight; Lois, age six; Marlene, age three.

#### VI.

That except for a small amount of relief from the Multnomah County Public Welfare Bureau during the past two years while your petitioner had temporary employment your petitioner has at all times been, and he now is, the sole support of his said wife and three little children and the partial support of his aged and crippled father Ernest Baer who will be seventy years old on June 4, 1935.

#### VII.

That said alleged crimes date back from eight to four years prior to said marriage of your petitioner and at no time during the past fourteen years

has your petitioner been convicted of a crime, or even accused of the commission of a crime and, during the past fourteen years, your petitioner has faithfully performed his work as civil engineer holding responsible positions including employment for the United States Coast and Geodetic Survey, the City of Portland, the Title and Trust Company of Portland, Wallowa Law, Land and Abstract Company of Enterprise, Stevens and Koon consulting engineers of Portland and, further, in the year 1933 your petitioner was the [5] originator and designer of the plans and specifications and cost estimates filed with and accepted by the City Council of the city of Portland for a six million dollar sewage disposal plant which was subsequently voted upon at a special city election.

#### VIII.

That in addition to approximately fourteen years of faithful services performed by your petitioner as herein mentioned, your petitioner has served various terms in the Oregon National Guard and Third Oregon Regiment as follows:

1. In Company B, Oregon National Guard and honorably discharged.
2. In Company D, Oregon National Guard and honorably discharged.
3. In Battery A, Field Artillery Third Oregon and honorably discharged.

4. In Company D, Third Oregon and honorably discharged from service on Mexican border and final discharge reads "discharged account imprisonment by civil authority."

### IX.

That your petitioner alleges, as a further ground for issuance of a writ of habeas corpus herein, that the Department of Labor of the United States and/or said Roy J. Norene, Divisional Director of Immigration, is estopped from proceeding against your petitioner upon the ground hereinbefore set forth for the following reasons:

(a) The lapse of time since the commission of said crimes and the release of your petitioner therefor and the institution of the within deportation proceedings;

(b) The destruction of your petitioner's family in the event of the deportation of your petitioner for the reason that your petitioner's wife and children, all being born in the State of Oregon and citizens of the United States, refuse to go to Germany and such destruction of your petitioner's [6] family is contrary to the purported purpose of the present administration of the Department of Labor of the United States.

WHEREFORE: Your petitioner prays the Court that a writ of habeas corpus may be granted and issued, directed to the said Roy J. Norene, Divisional Director of Immigration, in the city of Portland, Multnomah County, State of Oregon, commanding him to produce the body of your peti-

tioner before Your Honor at a time and place therein to be specified, then and there to receive and do what Your Honor shall order concerning the detention and restraint of your petitioner and that your petitioner be restored to his liberty.

(Verification over)

Petitioner. [7]

State of Oregon,  
County of Multnomah—ss.

I, Walter Baer, being first duly sworn, depose and say that I am the petitioner in the within entitled cause and that the foregoing petition for writ of habeas corpus is true as I verily believe.

WALTER E. BAER

Subscribed and sworn to before me this 28th day of March, 1935.

[Seal]

IRVIN GOODMAN

Notary Public for Oregon.

My commission expires Oct. 2,  
1936.

Respectfully submitted,

IRVIN GOODMAN

Of Attorneys for Petitioner.

Due service of the within Amended Petition for Writ of Habeas Corpus, and the receipt of a duly certified copy thereof as required by law, is hereby accepted in Portland, Multnomah County, Oregon, this 28 day of March, 1935.

HUGH L. BIGGS

Ass't U. S. Attorney.

[Endorsed]: Filed March 28, 1935. [8]



AND AFTERWARDS, to wit, on the 29th day of March, 1935, there was duly filed in said Court, a Stipulation Relative to Answer to Amended Petition, in words and figures as follows, to wit:

[9]

[Title of Court and Cause.]

STIPULATION.

WHEREAS Amended Petition for Writ of Habeas Corpus was filed by petitioner on the 28th day of March, 1935, setting forth therein certain allegations in addition to those contained in the original Amended Petition, and

WHEREAS the issues are to be determined on the Amended Petition and Answer on the 29th day of March, 1935, and

WHEREAS there is not sufficient time for Respondent to prepare a formal Amended Answer denying the new matter alleged in the Amended Petition,

IT IS HEREBY STIPULATED by and between Irvin Goodman, of Counsel for the Petitioner, and Hugh L. Biggs, Assistant United States Attorney, Counsel for Respondent herein, that the new matter contained in said Amended Petition for Writ of Habeas Corpus, to-wit: Paragraph 4, Subsection "B" Lines 22 to 24, inclusive, and Paragraph 9 of said Amended Petition may be deemed by the Court to be denied by respondent as effectively as

if by formal verified amended answer.

Dated at Portland, Oregon, this 29 day of March, 1935.

IRVIN GOODMAN

Of Counsel for Petitioner

HUGH L. BIGGS

Assistant United States Attorney,  
Counsel for Respondent herein.

[Endorsed]: Filed Mar. 29, 1935. [10]

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AND, to wit, on Wednesday, the 27th day of February, 1935, the same being the 94th judicial day of the regular November term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [11]

[Title of Court and Cause.]

RULE TO SHOW CAUSE.

ON READING and filing the petition of Walter Baer, duly signed and verified by him, whereby it appears that he alleges he is illegally imprisoned and restrained of his liberty by Roy J. Norene, Divisional Director of Immigration in the City of Portland, Multnomah County, State of Oregon, and stating wherein the illegality consists,

IT IS HEREBY ordered that Roy J. Norene, said Divisional Director of Immigration, appear and show cause before this Court at the Court-house thereof in said city of Portland on Thursday the 28th day of February, 1935, at 10:00 A. M. on said day, why a writ of habeas corpus should not be granted and issue, and said Walter Baer restored to his liberty, and to do and receive what shall then and there be considered concerning the said Walter Baer, together with the time and cause of his detention.

IT IS FURTHER ordered that service of this rule to show cause be forthwith made upon said Roy J. Norene.

Dated at Portland, Oregon, this 27th day of February, 1935.

JAMES ALGER FEE  
Judge.

[Endorsed]: Filed February 27, 1935. [12]

AND AFTERWARDS, to wit, on the 8th day of March, 1935, there was duly filed in said Court, an Answer of Respondent, in words and figures as follows, to wit: [13]

[Title of Court and Cause.]

ANSWER AND RETURN TO RULE TO  
SHOW CAUSE.

COMES NOW Roy J. Norene, Respondent herein, appearing by Carl C. Donough, United States Attorney for the District of Oregon, and Hugh L. Biggs, Assistant United States Attorney, and for his return to the rule to show cause by what authority the petitioner herein, Walter Baer, is restrained of his liberty, which said rule was heretofore issued by this court on the 26th day of February, 1935, respectfully shows unto the court and alleges as follows, to-wit:

I.

That the respondent, Roy J. Norene, is now and for the past eighteen months has been Divisional Director of the Bureau of Immigration and Naturalization for the District of Oregon, under the Department of Labor of the United States, and during all the times herein mentioned was designated as Immigrant Inspector and performed all of the duties incumbent upon such official within the immigration district comprising the State of Oregon; that among the duties of said Inspector are the duties of enforcing the Acts of Congress

and laws of the United States pertaining to and having to do with the immigration and deportation of aliens resident of and found within the United States and particularly within the district comprising the State of Oregon, who are not legally entitled to be and remain in the United States for reasons propounded by law.

## II.

That on the 29th day of March, 1934, the respondent, Roy J. Norene did receive from the Department of Labor a warrant for the arrest of your petitioner, issued to the District Director of Immigration and Naturalization, Seattle, Washington, under the hand of W. W. Husband, Second Assistant Secretary of Labor, and under the seal of the Department of Labor, setting forth that the said petitioner was an alien in the United States, being a citizen of Germany; ~~that the said petitioner was an alien in the United States, being a citizen of Germany;~~ that the said petitioner entered the United States on the 6th day of July, 1907, and had remained continuously in this country since that date, and that he had been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission, subsequent to entry, of a crime involving moral turpitude, to-wit: burglary in the second degree, knowingly uttering a forged bank check, and forgery of endorsement;

That, pursuant to the statutes of the United States and the rules and regulations of the Department, said respondent, Roy J. Norene did arrest the said petitioner on the 9th of April, 1934, in execution of said warrant and did, on the same day, release the said petitioner under \$500 bond; that in further execution of said warrant and in conformity with the terms thereof and the statutes in such cases made and provided, your respondent did thereupon fix the time for the hearing of the truth of the charges above-mentioned and enabling your petitioner to show cause why he should not be deported in conformity with the law as the 18th day of July, 1934, and did notify your petitioner of the time and place for said hearing.

That a copy of said warrant is marked Exhibit "A", attached hereto, and made a part hereof.

### III.

That on the 18th day of July, 1934, a hearing was held by the said Roy J. Norene, as by law provided, at the respondent's office in the Federal Court House, Portland, Oregon, at which time and place your petitioner appeared in person and by counsel, Irvin Goodman and Harry L. Gross; that your petitioner was then and there informed that the purpose of said hearing was to afford your petitioner an opportunity to show [15] cause why he should not be deported to the country whence he came, said warrant being read and each and every allegation therein contained carefully explained;

that said warrant was then and there exhibited to your petitioner and each of his counsel for their scrutiny; that the respondent introduced various and sundry documentary evidence in support of the truth of the charges upon which said warrant was issued; that the hearing was continued until the 27th day of July, 1934, to be held in the same place; that at the continued hearing the petitioner appeared in person and by counsel, Harry L. Gross and Ernest Cole, and offered testimony in his own behalf;

That all of the proceedings had at the hearing and the continuance thereof were reduced to shorthand notes by Marjorie E. Kidd, a competent stenographer, and thereafter extended by typewriter, and the transcript of said notes certified to as being a true and correct transcript of the record of the hearing in said case by the said Marjorie E. Kidd, stenographer.

#### IV.

That said hearing was had for the purpose of determining whether the petitioner, Walter Baer, was in the United States in violation of the Immigration act of February 5, 1917, and subject to deportation on the ground that he had been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission, subsequent to entry, of a crime involving moral turpitude, to-wit: burglary in the second degree, knowingly uttering a forged bank check, and forgery of endorsement, and to enable

the said petitioner to show cause why he should not be deported in conformity with the law upon the grounds aforesaid, and was so instituted and conducted in all respects in conformity with the immigration rules of the United States Department of Labor; that said petitioner's counsel were given an opportunity to and did cross-examine witnesses testifying at the said hearing, were permitted to introduce evidence and given an opportunity [16] to show cause why he should not be deported, and for the purpose of showing that he had not violated the said Act of February 5, 1917;

That your respondent introduced documentary evidence establishing (1) Immigration to the United States by the petitioner, from Germany, on the 6th day of July, 1907; (2) Conviction of the crime of burglary in the second degree and a sentence of from one to five years in the Idaho State Penitentiary on the 26th day of June, 1917, in the County of Bear Lake, State of Idaho; (3) Conviction of the crime of knowingly uttering a forged bank check and sentence to imprisonment in the Oregon State Penitentiary for a term of not over four years on the 17th day of November 1919; (4) Conviction of the crime of forgery of an endorsement and sentence to a term of imprisonment in the Oregon State Penitentiary of not over four years on the 15th day of June, 1921; the last two convictions being in the Circuit Court for the District of Oregon for the County of Multnomah;



That the original record of said hearing and the exhibits therein received are hereby referred to and by reference incorporated herein to be presented and filed in court in this cause.

## V.

That thereafter the complete record of said hearing granted the said petitioner was transmitted to the Commissioner of Immigration of the United States in conformity with the immigration laws of the United States, as aforesaid, and the rules and regulations promulgated thereunder, together with the recommendations of the District Director of Immigration, who was then and there in charge of the Immigration Office at Seattle, Washington, for the consideration and determination of the said Commissioner of Immigration and the Secretary of Labor as to whether or not a warrant for the deportation of said petitioner should issue. [17]

## VI.

That thereafter, and on to-wit: the 9th day of November, 1934, after a consideration of the record in said proceeding and hearing for the deportation of the said petitioner, The Honorable Secretary of Labor found and decided that the petitioner, Walter Baer, was an alien found in the United States in violation of the Immigration Act of February 5, 1917, to-wit: That he had been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the com-

mission, subsequent to entry, of a crime involving moral turpitude, to-wit: burglary in the second degree, knowingly uttering a forged bank check, and forgery of endorsement, and thereupon issued a warrant for the deportation of the petitioner to the country from whence he came, to-wit: Germany, which said warrant was directed to the District Director of Immigration and Naturalization, Seattle, Washington, and the District Director of Immigration and Naturalization, Ellis Island, New York Harbor, and thereafter forwarded, for service upon petitioner, to the respondent herein, a true and correct copy of which warrant is hereto annexed, marked Exhibit "B" for identification and by reference incorporated into this pleading and made a part hereof as if in words and figures in this place fully set forth.

That said warrant of deportation contains the findings of the Secretary of Labor, and petitioner could have examined said warrant at respondent's office at any time, had he so requested.

## VII.

That your respondent, Roy J. Norene, as Immigrant Inspector in the State and District of Oregon, by virtue of said office, is authorized to serve warrants of deportation, as such, upon and to arrest the persons therein named, and in execution of said warrant for the deportation of your petitioner the said Roy J. Norene, your respondent herein, acting in his official capacity, ordered and directed

the bondsmen of your petitioner to produce the petitioner for deportation to Germany; that the petitioner was surrendered to the respondent for deportation on the 20th day of February, 1935, and is now and ever since said 20th day of February, 1935, has been legally in custody [18] of your respondent, to be joined with the next deportation party leaving the District of Oregon for a port of embarkation, ~~and that the said warrant of deportation party leaving the District of Oregon for a port of embarkation,~~ and that the said warrant of deportation was and is the cause and authority of the said Roy J. Norene, respondent herein, for the imprisonment and detention of him, the said petitioner, as aforesaid.

#### VIII.

That petitioner, Walter Baer, is legally detained by reason of the proceedings aforesaid, and should be deported to Germany in accordance with the law and legal procedure respecting the case; that the said hearing was fair and impartial and properly and regularly conducted, as disclosed by the exhibits filed herein, and that the testimony duly and regularly transmitted was reasonably sufficient to satisfy, and did satisfy, the proper authorities as to the merits of the government's claim that the said petitioner should be deported in accordance with the Immigration Act of February 5, 1917, and rules and regulations promulgated thereunder.

WHEREFORE, the said Roy J. Norene, respondent herein, having fully answered the rule to show

cause why a writ of habeas corpus for the said Walter Baer should not be issued as prayed for in said petition of the said Walter Baer, prays that the rule to show cause, heretofore issued on the 25th day of February, 1935, be discharged; that the petition for writ of habeas corpus be dismissed, and that the petitioner, Walter Baer, be remanded to the custody of the said respondent for execution of the said warrant of deportation.

CARL C. DONAUGH

United States Attorney for  
the District of Oregon.

HUGH L. BIGGS

Assistant United States  
Attorney. [19]

United States of America,  
District of Oregon.—ss.

I, Roy J. Norene, being first duly sworn, depose and say:

That I am now, and for the past eighteen months have been, Divisional Director of the Bureau of Immigration and Naturalization for the District of Oregon, and stationed at Portland, Oregon; that I have read the foregoing answer and return to the rule to show cause, issued by this Honorable Court on the 25th day of February, 1935, directed to myself, to show cause why a writ of habeas corpus should not issue, and know the facts therein

stated and contained, and that the same are true as I verily believe.

ROY J. NORENE.

Subscribed and sworn to before me this 6th day of March, 1935.

[Seal]

HUGH L. BIGGS

Notary Public for Oregon.

My commission expires:

Sept. 17, 1935. [20]

EXHIBIT "A"

Warrant—Arrest of Alien

UNITED STATES OF AMERICA

Department of Labor

Washington

No. 81/820

No. 55860/11

To DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, Seattle, Washington, or to any Immigrant Inspector in the service of the United States.

WHEREAS, from evidence submitted to me, it appears that the alien WALTER BAER alias W. C. PAGET alias BEN KIRCHNER, who landed at the port of New York, N. Y., ex SS "Kaiserin Augusta Victoria", on the 6th day of July, 1907, has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons: That he has

been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Burglary in the second degree; Knowingly uttering a forged bank check; and Forgery of Endorsement,

I, W. W. Husband, Second Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation, "Salaries and Expenses, Immigration and Naturalization Service, 1934." Pending further proceedings, the alien may be released from custody under bond in the sum of \$1000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 29th day of March, 1934.

[Seal]

W. W. HUSBAND

Second Assistant Secretary of Labor.

JFH

[21]

EXHIBIT "B"

WARRANT—DEPORTATION OF ALIEN  
UNITED STATES OF AMERICA

Department of Labor  
Washington

No. 81/820

No. 55860/11

DISTRICT DIRECTOR OF IMMIGRATION  
and NATURALIZATION, Seattle, Washing-  
ton.

To: DISTRICT DIRECTOR OF IMMIGRATION  
and NATURALIZATION, Ellis Island, N. Y.  
H. or to any officer or employee of the United  
States Immigration and Naturalization Ser-  
vice.

Whereas, from proofs submitted to me, Assist-  
ant to the Secretary, after due hearing before an  
authorized immigrant inspector, I have become  
satisfied that the alien WALTER ERNST BAER  
alias W. C. PAGET alias BEN KIRCHNER, who  
entered the United States at New York, N. Y., ex  
SS "Kaiserin Auguste Victoria", on the 6th day  
of July, 1907, is subject to deportation under sec-  
tion 19 of the Immigration Act of February 5, 1917,  
being subject thereto under the following provi-  
sions of the laws of the United States, to wit: The  
act of 1917 in that he has been sentenced, subse-  
quent to May 1, 1917, to imprisonment more than  
once for a term of one year or more for the com-

mission subsequent to entry of a crime involving moral turpitude, to wit: burglary in the second degree, knowingly uttering a forged bank check, and forgery of endorsement,

I, Turner W. Battle, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to deport the said alien to Germany, at the expense of the Appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1935", including the expenses of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 9th day of November, 1934.

TURNER W. BATTLE  
Assistant to the Secretary of  
Labor. [22]

United States of America,  
District of Oregon.—ss.

Service of the within ANSWER AND RETURN TO RULE TO SHOW CAUSE is accepted in the State and District of Oregon, this 8th day of March 1935, by receiving a copy thereof, duly certified to as such by Hugh L. Biggs, Assistant United States Attorney for the District of Oregon.

IRVIN GOODMAN

Of Attorneys for Petitioner.

[Endorsed]: Filed March 8, 1935. [23]



AND AFTERWARDS, to wit, on Friday, the 29th day of March, 1935, the same being the 23rd judicial day of the regular March term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

[24]

No. L-12422

In the Matter of the Application of  
WALTER BAER  
for a Writ of Habeas Corpus.

March 29, 1935.

Now at this day comes the petitioner by Mr. Irvin Goodman and Mr. Ernest Cole, of counsel, and the respondent Roy J. Norene, Divisional Director of Immigration, by Mr. Hugh L. Biggs, Assistant United States Attorney. Whereupon counsel for the respective parties hereto stipulate that the new matter in the amended petition herein be deemed denied by the respondent. Whereupon this cause comes on for hearing upon the amended petition for an order requiring the respondent to show cause why a writ of Habeas Corpus should not issue herein and the respondent's answer thereto; and the court having heard the evidence adduced and the arguments of counsel, and being now fully advised in the premises,

IT IS ORDERED that the said petition be and the same is hereby dismissed, and said application

for a Writ of Habeas Corpus is hereby denied; and

IT IS ORDERED that the petitioner be and he is hereby allowed thirty days from this date within which to initiate an appeal herein, and that bond on appeal be and the same is hereby fixed in the sum of \$500.00. [25]

---

AND AFTERWARDS, to wit, on the 5th day of June, 1935, there was duly filed in said Court, a Petition for Appeal, in words and figures as follows, to wit: [26]

[Title of Court and Cause.]

#### PETITION FOR APPEAL.

NOW COMES Walter E. Baer, the person in whose behalf the petition for writ of habeas corpus was filed in the above-entitled Court, and respectfully shows:

THAT on or about March 29, 1935, the above-entitled Court made and entered its order denying the petition for writ of habeas corpus as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of appellant herein, all of which will more fully appear from the assignment of errors filed herewith;

WHEREFORE, appellant prays that an appeal be granted in appellant's behalf to the Circuit

Court of Appeals for the United States for the Ninth Circuit thereof, for the correction of errors as complained of, and further that a transcript of the record, proceedings and papers in the above-entitled Court, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further that said appellant be held within the jurisdiction of this Court during the pendency of the appeal herein so that he may be produced in execution of whatever judgment may be finally entered herein. Dated at Portland, Oregon, this 5th June, 1935.

IRVIN GOODMAN

Attorney for Appellant  
1225 Yeon Bldg.,  
Portland, Ore.  
At 7494

Service accepted hereon this 5th June, 1935.

HUGH L. BIGGS

Ass't U. S. Attorney

[Endorsed]: Filed June 5, 1935. [27]

AND AFTERWARDS, to wit, on the 5th day of June, 1935, there was duly filed in said Court, an Assignment of Errors, in words and figures as follows, to wit: [28]

[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

NOW COMES WALTER BAER, the person in whose behalf the petition for writ of habeas corpus was filed in the above-entitled proceeding, through his attorney Irvin Goodman, and sets forth the errors he claims the above-entitled Court committed in denying the petition for writ of habeas corpus, as follows:

##### I.

THAT said Court erred in denying the writ of habeas corpus by holding that the following crimes are crimes involving moral turpitude within the meaning of the Immigration law, to-wit:

(a) Burglary in the second degree in the State of Idaho in the year 1917;

(b) Knowingly uttering a forged bank check in the State of Oregon in the year 1919;

(c) Forgery of endorsement in the State of Oregon in the year 1921;

WHEREFORE appellant prays that said order and judgment of the United States District Court for the District of Oregon, made, given and entered therein in the office of the Clerk of said Court on

the 29th March, 1935, denying the petition for writ of habeas corpus be reversed and that the said Walter Baer be restored to his liberty and go hence without delay. Dated at Portland, Oregon, this 5th June, 1935.

IRVIN GOODMAN

Attorney for Appellant.

Service accepted hereon this 5th June, 1935.

HUGH L. BIGGS

Ass't U. S. Attorney.

[Endorsed]: Filed June 5, 1935. [29]

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AND AFTERWARDS, to wit, on Wednesday, the 5th day of June, 1935, the same being the 76th judicial day of the regular March term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

[30]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL

IT APPEARING to the above-entitled Court that Walter Baer, the person in whose behalf the petition herein was filed, has this day filed and presented to the above-entitled Court his petition praying for an order of this Court allowing an

appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and order of said Court denying writ of habeas corpus and dismissing his petition for said writ, and good cause appearing therefor,—

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and,

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled Court make and prepare a transcript of all papers, proceedings and records in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, within the time allowed by law and/or fixed by this Court; and,

IT IS HEREBY FURTHER ORDERED that execution of the warrant of deportation of said appellant be, and the same is hereby, stayed pending this appeal and that said appellant be not removed from the jurisdiction of this Court pending this appeal and that the present custody and control remain undisturbed pending this appeal. Dated at Portland, Oregon, this 5th June, 1935.

JAMES ALGER FEE

Judge of the aforesaid Court.

Service accepted hereon this 5th June, 1935.

HUGH L. BIGGS

Ass't U. S. Attorney.

[Endorsed]: Filed June 5, 1935. [31]

AND AFTERWARDS, to wit, on the 5th day of June, 1935, there was duly filed in said Court, a Stipulation of Facts in words and figures as follows, to wit: [32]

[Title of Court and Cause.]

### STIPULATION

Appellant and Appellee, by their respective counsel herein, do hereby stipulate and agree upon the following Statement of Facts and upon the following Issue Presented Upon Appeal in the aforesaid matter:

### STATEMENT OF FACTS

On March 29, 1934, Roy J. Norene, Appellee, received from the Department of Labor a warrant for the arrest of Appellant issued to the District Director of Immigration and Naturalization, Seattle, Washington, under the hand of W. W. Husband, Second Assistant Secretary of Labor, and under the seal of the Department of Labor, said warrant setting forth in substance that Appellant is an alien in the United States, being a citizen of Germany, and entered the United States on July 6, 1907 remaining continuously since said date and that Appellant, subsequent to May 1, 1917 had been sentenced to imprisonment more than once for a term of one year or more for the commission of a crime involving moral turpitude to-wit: burglary in the second degree, knowingly uttering a forged bank check, and forgery of endorsement.

That pursuant to the statutes of the United States and the rules and regulations of the Department, said Appellee did arrest Appellant on the 9th April, 1934, in execution of said warrant and did, on the same day, release the Appellant under \$500 bond; that in further conformity with the terms thereof and the statutes in such cases made and provided, Appellee fixed the time for the hearing of the truth of the charges above-named and enabling Appellant to show cause why he should not be deported in conformity with the law, notifying Appellant thereof. [33]

That on July 18, 1934 and July 27, 1934, hearings were had by Appellee in the Federal Court House, Portland, Oregon, and at said hearings Appellant was represented by counsel, evidence was introduced, briefs submitted to the Department of Labor and, thereafter, the Department of Labor determined that Appellant should be deported to Germany.

That, thereafter, Appellant filed his Amended Petition for Writ of Habeas Corpus and Rule to Show Cause in the United States District Court for the District of Oregon to which Appellee filed his Answer and Return to Rule to Show Cause and on March 29, 1935 James Alger Fee, Judge of the aforesaid court, denied Appellant's said Amended Petition for Writ of Habeas Corpus whereupon this appeal is taken.



THE ISSUE.

Appellant and Appellee do hereby further stipulate and agree that Appellant, Walter Baer, was convicted for the commission of the three crimes hereinafter mentioned and, on each occasion, was imprisoned in the penitentiary for more than one year and, therefore, the only issue presented upon this appeal and to be determined by the Circuit Court of Appeals for the United States, Ninth Circuit, is whether or not the United States District Court for the District of Oregon erred in holding that the following crimes committed by Walter Baer are crimes involving moral turpitude within the meaning of the Immigration Law, to-wit:

(a) Burglary in the second degree in the State of Idaho in the year 1917, and sentenced to more than one year.

(b) Knowingly uttering a forged bank check in the State of Oregon in the year 1919 and sentenced to more than one year.

(c) Forgery of endorsement in the State of Oregon in the year 1921, and sentenced to more than one year.

IRVIN GOODMAN

Attorney for Appellant.

CARL DONAUGH,

U. S. Attorney, and

HUGH L. BIGGS,

Assist. U. S. Attorney.

By: HUGH L. BIGGS,

Attorneys for Appellee.

Dated June 5, 1935.

[Endorsed]: Filed June 5, 1935. [34]

AND AFTERWARDS, to wit, on the 5th day of June, 1935, there was duly filed in said Court, a Praeceptum for Transcript in words and figures as follows, to wit: [35]

[Title of Court and Cause.]

PRAECEPTUM FOR TRANSCRIPT OF RECORD.

To the Clerk of the above-entitled Court:

Please prepare transcript on appeal to include:

- (1) Amended petition for writ of habeas corpus.
- (2) Rule to show cause.
- (3) Answer and Return to Rule to Show Cause.
- (4) Stipulation. Dated March 29, 1935.
- (5) Order denying Petition.
- (6) Notice of Appeal.
- (7) Petition for Appeal.
- (8) Assignment of Error.
- (9) Order allowing appeal.
- (10) Citation on appeal.
- (11) Stipulation, dated June 5, 1935.
- (12) Praeceptum for Transcript of Record.

Dated at Portland, Oregon, June 5, 1935.

IRVIN GOODMAN

Attorney for Appellant.

Service accepted hereon this 5th day of June, 1935.

HUGH L. BIGGS

Assistant U. S. Attorney.

[Endorsed]: Filed June 5, 1935. [36]

United States of America,  
District of Oregon.—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages, numbered from 2 to 36 inclusive, constitute the transcript of record upon the appeal from the judgment of said court, in a cause pending therein In the Matter of the Petition of Walter Baer for a Writ of Habeas Corpus, Walter Baer, Appellant and Roy J. Norene, Divisional Director of Immigration, Appellee; that the said transcript has been prepared by me in accordance with the praecipe for transcript filed by said appellant, and has been by me compared with the original thereof, and is a full true and complete transcript of the record and proceedings had in said Court in said cause, in accordance with the said praecipe, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$6.15, and that the same has been paid by the said appellant.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court, at Portland, in said District, this 7th day of June, 1935.

[Seal]

G. H. Marsh, Clerk. [37]

[Endorsed]: No. 7890. United States Circuit Court of Appeals for the Ninth Circuit. Walter Baer, Appellant, vs. Roy J. Norene, Divisional Director of Immigration, for the District of Oregon, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 10, 1935.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.